

**24 CFR 58.5(A)—Historic  
Properties of Religious and  
Cultural Significance to Indian  
Tribes and Native Hawaiian  
Organizations**





## **Tribal Consultation Requirements of the National Historic Preservation Act of 1966**

- Statute: Section 106 of the *National Historic Preservation Act of 1966* (16 U.S.C. 470 et seq.)
- Executive Order 13175 (Effective Nov 6, 2000) “Consultation and Coordination with Indian Tribal Government” – requires Federal agencies to take into account the effects of their undertakings on historic properties of religious and cultural significance to tribes
- Implementing Regulation: 36 CFR Part 800 (Effective Aug 5, 2004) “Protection of Historic Properties”



## **Unique Authority for RE's to Assume HUD's Section 106 "Agency Official" Responsibilities**

- RE's assume Section 800.2(c)(2)(ii)(3) requirement for an "agency official" to enter into government-to-government consultation with tribes  
([http://portal.hud.gov/hudportal/documents/huddoc?id=DOC\\_13724.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_13724.pdf))



# **RE's Must Determine if Section 106 Review is Required**

- Not required if:
  - Activities that are Exempt pursuant to 24 CFR Part 58.34(a)(1-11)
  - If a Section 106 Programmatic Agreement covers the activity and does not require a review
  - If the project's NEPA process is coordinated by another lead federal agency, may defer to that agency's findings.



## **RE's Must Determine if Activity Has the Potential to Affect Historic Properties of Religious and Cultural Significant to Tribes**

- Ground disturbance (digging)
- New construction in undeveloped natural areas
- Introduction of incongruent visual, audible, or atmospheric changes
- Work on a building or structure with significant tribal association
- Transfer, lease or sale of historic properties of religious and cultural significance.
- When to consult with tribes checklist:
  - [http://portal.hud.gov/hudportal/documents/huddoc?id=env\\_tribes\\_c hecklist.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=env_tribes_c hecklist.pdf)
- If the project will not have an affect, include checklist in ERR and include checklist as documentation in ERR and mark Box A on the Statutory checklists



## **RE's Must Determine if Project is in an Area With Tribal Interests**

- Determine if there are tribes with interest in the project area
  - HUD's Tribal Directory Assessment Tool  
([www.hud.gov/offices/cpd/environmental/tribal](http://www.hud.gov/offices/cpd/environmental/tribal) )
- If there are no recognized tribes with interest in your project area include documentation in the ERR and mark Box A on the Statutory Checklist.





## WHEN:

PROJECT AREA OF  
POTENTIAL  
EFFECT IS IN AN  
AREA WHERE  
TRIBES HAVE AND  
INTEREST



PROJECT IS OF THE  
TYPE THAT COULD  
HAVE AN  
ADVERSE EFFECT

- Must make a “reasonable and good faith effort” to identify federally recognized tribes that might attach religious and cultural significance to the location of your project and you must invite them to be consulting parties.
- Consult with the relevant tribe(s) to identify any such properties in the project’s Area of Potential Effect



# Section 106 Tribal Consultation Process

- **Step 1: Initiate Consultation**
  - Coordinate with tribe to determine if the project could potentially affect properties with religious or cultural significance
  - Determine if tribes want to be a consulting party
- **Step 2. Consult with the tribe(s) to identify and evaluate historic properties of religious and cultural significance**
  - Consultation Meeting(s)
  - Evaluation of Historic Properties for the National Register of Historic Places
  - Surveys to Identify Additional Historic Properties  
([http://portal.hud.gov/hudportal/documents/huddoc?id=env\\_factsheet\\_6.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=env_factsheet_6.pdf))
  - Ensure Confidentiality of Information





## **Step 3. Consult with the tribe(s) to evaluate the effects of the project on identified and potential historic resources**

- **Apply Criteria of Adverse Effect** in consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization
- **Make Finding:**
  - No Historic Properties Affected Finding
  - No Adverse Effect Finding
  - Adverse Effect Finding
- **Tribes have 30 days to respond to Finding**



## **Step 4: Consult to Resolve Adverse Effects**

- Notify Advisory Council on Historic Preservation
- Consider Alternatives
- Consider Mitigation Measures
- Resolve objections received from tribes
- Prepare and Execute Memorandum of Agreement (MOA)
  - Legally binding document
  - Signatories include RE, Tribe, THPO and SHPO
  - Must be completed before NOI/RROF and FONSI Notice
  - Must be submitted to HUD Field Environmental Officer



## **Documentation for the ERR**


- THPO/Tribal letters confirming that no properties of religious or cultural significance to tribes are present in the project area
- Emails, notes, letters
- Reports and archeological surveys
- Memorandum of Agreement
- Written documentation of compliance with agreements, conditions, mitigation measures



# Example Documentation


- Print out from TDAT

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Tribal Directory Assessment Information

Contact Information for Tribes of Angelina County, Texas



1		
	Tribal Name	County Name
1		



## **Failure to Consult with Tribes**

- If HUD makes a finding of non-compliance with 36 CFR Part 800, it can initiate:
  - Corrective Actions
  - Sanctions
  - Terminate grants
  - Require repayment of HUD funds



# HUD Has Introduced New Policies and Tools

- **Assessment Tools for Environmental Compliance**
  - [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/comm\\_planning/environment/review/historic](http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/environment/review/historic)
- **Process for Tribal Consultation in Projects That Are Reviewed Under 24 CFR Part 58 (New)**
  - **CPD Notice:** CPD-12-006
  - [http://portal.hud.gov/hudportal/documents/huddoc?id=env\\_notice\\_tribe\\_con.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=env_notice_tribe_con.pdf)
- **Section 106 Agreements Database:**
  - [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/comm\\_planning/environment/section106](http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/environment/section106)





**THANK YOU!**